



Office of the Secretary

[Docket No OST-2021-0135]

Privacy Act of 1974; DOT/ALL 028; Employee Accommodations Files

AGENCY: Office of the Departmental Chief Information Officer, Office of the Secretary of Transportation, Transportation (DOT).

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the U.S. Department of Transportation (DOT) intends to establish a new system of records titled Employee Accommodations Files. This system allows DOT to collect, use, maintain, and disseminate the records needed to process, manage, maintain, and resolve reasonable accommodation requests from employees or applicants for employment based on a medical condition/disability or a sincerely held religious belief, practice, or observance. This includes requests for a medical or religious accommodation to decline the COVID-19 vaccination. The information will be used to determine whether accommodations are legally required in accordance with the Rehabilitation Act and Title VII of the Civil Rights Act of 1964.

DATES: This new system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before *[insert date 30 days from the publication date in the Federal Register](#)*. The Routine Uses will become effective at the close of the comment period. The Department may publish an amended System of Records Notice (SORN) in light of any comments received.

ADDRESSES: You may submit comments, identified by docket number OST-2021-0135- by any of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.
- *Instructions:* You must include the agency name and docket number OST-2021-0135.
- All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT’s complete Privacy Act statement in the Federal Register published on April 11, 2000 (65 FR 19477–78), or you may visit <https://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents or comments received, go to <https://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For general and privacy questions, please contact: Karyn Gorman, Acting Departmental Chief Privacy Officer, Department of Transportation, S-83, Washington, DC 20590, Email: privacy@dot.gov, Tel. (202) 366-3140.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Privacy Act of 1974, 5 U.S.C. § 552a, the U.S. Department of Transportation (DOT), Office of the Secretary, is proposing a new system of records titled Employee Accommodations Files. The Rehabilitation Act of 1973, as amended, 29 USC 791 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C §2000e, require DOT to grant employee requests for medical/disability accommodations or religious accommodations

because of a sincerely held religious belief, practice or observance unless an undue hardship would result. DOT is similarly required in some circumstances to grant employee requests for medical accommodations because of disability. The government-wide policy requiring all Federal employees as defined in 5 U.S.C. § 2105 to be vaccinated against COVID-19 is expected to generate many requests for medical/disability and religious accommodations.

In order to process and make a determination on an accommodation request, DOT is required to collect information from Federal employees and applicants for federal employment making such requests.

This system will collect information related to individuals requesting medical/disability and religious accommodations. These accommodation requests include but are not limited to requests for exemptions from vaccines. By requesting an accommodation, individuals are authorizing DOT to collect and maintain a record of the information submitted to support the request for the accommodation. The information contained within this system of records will be collected directly from the individual employees or applicants for federal employment who have requested accommodations. This new system will be included in DOT's inventory of record systems.

DOT has also included DOT General Routine Uses, to the extent they are compatible with the purposes of this System. As recognized by the Office of Management and Budget (OMB) in its Privacy Act Implementation Guidance and Responsibilities (65 FR 19746 (July 9, 1975)), the routine uses include proper and necessary uses of information in the system, even if such uses occur infrequently. DOT has included in this notice routine uses for disclosures to law enforcement when the record, on its face, indicates a violation of law, to DOJ for litigation purposes, or when necessary in investigating or responding to a breach of this system or other agencies' systems. DOT may disclose to Federal, State, local, or foreign agency information relevant to law enforcement, litigation, and proceedings before any court or adjudicative or administrative body. OMB has long recognized that these types of routine uses are "proper and necessary" uses of information and qualify as compatible with agency

systems (65 FR 19476, April 11, 2000). In addition, OMB Memorandum M-17-12 directed agencies to include routine uses that will permit sharing of information when needed to investigate, respond to, and mitigate a breach of a Federal information system. DOT also has included routine uses that permit sharing with the National Archives and Records Administration when necessary for an inspection, or to any federal government agency engaged in audit or oversight related to this system. These types of disclosures are necessary and proper uses of information in this system because they further DOT's obligation to fulfill its records management and program management responsibilities by facilitating accountability to agencies charged with oversight in these areas.

Privacy Act

The Privacy Act (5 U.S.C. 552a) governs the means by which the federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act extends rights and protections to individuals who are U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a covered person with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act.

Below is the description of the Employee Accommodations Files System of Records. In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the OMB and to Congress.

SYSTEM NAME AND NUMBER: DOT/ALL 28; Employee Accommodations Files

SECURITY CLASSIFICATION: Unclassified

SYSTEM LOCATION: Records are maintained in a FedRAMP-certified third-party cloud environment. Records may also be kept in other components and sub-offices of DOT.

SYSTEM MANAGER(S): Office of Civil Rights, at Department of Transportation at 1200 New Jersey Avenue, SE, Washington, DC 20590. Yvette Rivera, Associate Director, Equity and Access Division, Departmental Office of Civil Rights, 202-366-5131. For the Federal Aviation Administration, the Office of Civil Rights, 800 Independence Ave SW, Washington, DC 20591. Michael Looney, Program Manager, (202) 267-3258.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

- Title VII of the Civil Rights Act of 1964 42 USC 2000e
- Rehabilitation Act of 1973, as amended, 29 USC 791
- Executive Order 13164
- 29 CFR Parts 1605, 1614

PURPOSE(S) OF THE SYSTEM: The purpose of the system is to collect information from individuals seeking medical/disability and/or religious accommodations in order to approve or deny their requests.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals within this system include: Individuals who are current DOT employees and applicants for federal employment who have requested medical/disability and/or religious accommodations.

CATEGORIES OF RECORDS IN THE SYSTEM: Records include the name of the individual seeking accommodations, nature of the accommodation sought, including but not limited for religious accommodations, how complying with such a requirement would burden religious exercise, how long the belief has been held and the reason for seeking exemption.

For accommodations based on medical/disability, the records will include information such as nature of the medical condition/disability, functional limitations caused by the medical condition/disability, how the requested accommodation would address the functional limitations, medical documentation of the medical condition/disability, and other information specific to the requested accommodation to determine whether DOT is legally required to grant the request.

PII elements: Name, title, email address, phone number, operating administration, pay grade or band, supervisor information, other information collected from requesters to make a determination regarding a specific medical and/or religious accommodation request.

RECORD SOURCE CATEGORIES: DOT employees and applicants seeking medical/disability and/or religious accommodations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Department General Routine Uses

1. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.
- 2a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other federal agency conducting litigation when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of

Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

2b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

3. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against

the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

4. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration (NARA) in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.
5. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.
6. DOT may disclose records from this system, as a routine use, to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) DOT has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DOT or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in

connection with DOT's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

7. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.
8. DOT may disclose records from the system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.
9. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.
- 10.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS: Records relating to requests for accommodation relating to mandatory COVID-19 vaccination are stored in the USDOT Vaccination Application. Records relating to other disability-related requests for accommodation are stored in the Reasonable Accommodation Management System (RAMS). Requests for religious accommodations may be stored in RAMS, or in systems at component or sub-office level.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS: Records on individuals will be retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be held in accordance with NARA General Records Control Schedule 2.3, Employee Relations Records, item 20, Reasonable accommodation case files. Individual employee files created, received, and maintained by EEO reasonable accommodation, diversity/disability programs, employee relations coordinators, supervisors, administrators, or Human Resource specialists containing records of requests for reasonable accommodation and/or assistive technology devices and services that have been requested for or by an employee. Includes: request, approvals and denials, notice of procedures for informal dispute resolution or appeal processes, forms, correspondence, records of oral conversations, policy guidance documents, medical records, supporting notes and documentation. These records are temporary and will be destroyed 3 years after employee separation from the agency or all appeals are concluded, whichever is later; however, longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Data is encrypted at rest and in transit. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the System Manager at the address identified in "System Manager and Address" above.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49

CFR Part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Freedom of Information Act Officer, <http://www.dot.gov/foia> or 202.366.4542. In addition, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES: See Record Access Procedures

NOTIFICATION PROCEDURES: See Record Access Procedures

EXEMPTIONS PROMULGATED FOR THE SYSTEM: None.

HISTORY: None.

Issued in Washington, DC.

Karyn Gorman,

Acting Departmental Chief Privacy Officer.

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